United Nations CAT/C/SR.1224

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
4 July 2014
English
Original: French

Committee against Torture
Fifty-second session

Summary record of the first part (public)* of the 1224th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 7 May 2014, at 10 a.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Montenegro

* No summary record was prepared for the second part (closed) of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.14-02520 (E) 030714 040714
1402520

Please recycle

The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Montenegro (CAT/C/MNE/2; CAT/C/MNE/Q/2; HRI/CORE/MNE/2012)

1. *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*

2. **Ms. Rabrenović** (Montenegro) said that Montenegro had been a party to the Convention since 1991 and to the Optional Protocol thereto since 2008. The second periodic report had been prepared with the cooperation of the Protector of Human Rights and Freedoms (Ombudsman) and a number of non-governmental organizations (NGOs). Many legislative and institutional reforms aimed at improving the protection and enjoyment of human rights had been carried out since the restoration of independence in 2006. The process to prepare for accession to the European Union, which had been launched in June 2012, would lead to further progress in the implementation of international human rights standards. Montenegro also attached great importance to the responsibilities that accompanied its membership of the Human Rights Council, beginning on 1 January 2013.

3. The Montenegrin Constitution guaranteed the inviolability of the physical and mental integrity of the person, prohibited torture and degrading treatment, and established a number of rights and safeguards for individuals deprived of their liberty. Experts from the European Union and a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had noted the absence of torture in Montenegrin prisons. The three most urgent of the recommendations contained in that Committee's report — which had been made public in Montenegro — had been implemented and many real improvements had been made to prison conditions. Alternative sentencing had also been introduced in order to reduce prison overcrowding. Memorandums of cooperation had been signed with NGOs with a view to encouraging efforts to prevent torture in prisons by means of projects to train prison staff and monitor conditions of detention.

4. New laws were being developed with a view to ensuring the full independence of the judiciary. Judges would be appointed and promoted in accordance with objective criteria and an independent mechanism to monitor judicial procedures would be established. Following the adoption of the Law on Home Affairs in July 2012, the Ministry of the Interior had been assigned full operational responsibility for the police force. As part of efforts to combat trafficking in persons, the Government had adopted a national strategy for the period 2012–2018 and strengthened the relevant provisions of the Criminal Code. In order to combat domestic violence, the Criminal Code provided for the possibility of issuing a protection order or a restraining order against the perpetrator. A national plan of action on children for the period 2013–2017 had also been adopted. At the end of 2013, a plan for restructuring the Komanski Most institution, which accommodated persons with disabilities, had been adopted in order to better respond to the needs of adults afflicted with an intellectual disability.

5. Although it had already obtained encouraging results, Montenegro planned to continue its efforts to implement the Convention more effectively and looked forward to receiving the Committee's recommendations.

6. **Mr. Tugushi** (Country Rapporteur) welcomed the important progress that had been made by the State party in the development of legislation. However, it was necessary for the definition of torture contained in the Criminal Code to be brought fully into line with the one contained in the Convention. Similarly, the penalties prescribed for acts of torture

or inhuman treatment seemed too light and could well be increased, taking into account best international practices. He wished to know what safeguards were afforded to persons who could be held by the police for questioning for up to six hours, whether such persons could request the presence of a lawyer and whether they were informed that they could end the interview at any time or not reply to police officers' questions. With regard to the right to notify one's family members upon being imprisoned, the 24-hour time limit specified in the Criminal Code seemed to contradict the Constitution, which stipulated that that right entered into effect from the moment of being taken into custody. The delegation was requested to clarify whether the time of such notification was recorded and whether prisoners were informed that it had indeed been registered. According to information he had received, although the law provided for prompt, or even immediate, access to a lawyer, it was not unusual for persons deprived of their liberty not to meet the lawyer who had been officially assigned to them until the time of their initial appearance before the judge. The delegation was requested to indicate whether any measures to remedy that situation were envisaged. It would also be interesting to know whether victims of torture and ill-treatment were entitled to free legal assistance on the same terms as other categories of victims. Regarding the right to have access to a physician, it appeared that measures were needed to ensure that that right was not forfeited in prisons or even during police custody. With regard to ill-treatment by the police, particularly during questioning, there was still room for improvement in terms of bringing about a change in attitudes and giving due consideration to all complaints lodged. In particular, victims should be examined by a forensic medical examiner and investigations should be initiated immediately. Citing the example of the investigation into the acts of torture to which Aleksander Pejanović had allegedly been subjected at the hands of the police in 2008, which was referred to in paragraph 26 of the list of issues and in paragraph 145 of the second periodic report, he noted that the prosecutor had not succeeded in obtaining the names of certain unidentified officers suspected of having participated in those acts and that an internal investigation had cleared the police officers of wrongdoing. The delegation was requested to specify what measures the Government envisaged taking in order to combat impunity and to ensure that investigations into cases of torture were conducted in conformity with international standards. According to information he had received, prison medical staff systematically carried out forensic medical examinations in order to detect signs of torture in newly arrived prisoners, but such examinations were superficial at best and did not conform to existing standards. He therefore asked whether there were plans to improve those procedures so as to combat ill-treatment by the police more effectively. Noting with satisfaction that, in 2010, the State party had enacted a new law to combat violence against women, he asked the delegation to provide disaggregated data on the number of cases registered, investigations conducted and convictions handed down. He also wished to know whether victims of domestic violence could receive individual support and were informed about their rights and how to obtain help. He asked how many orders of removal from place of residence or exclusion orders against violent partners had been issued and how many persons had received compulsory treatment for drug addiction or psychosocial therapy in 2013.

7. Given that Montenegro was a country of destination and transit for victims of trafficking for purposes of sexual exploitation or forced labour, the delegation was requested to provide information on measures taken by the State party to systematically investigate cases of trafficking and to prosecute and convict persons implicated in those cases. It would also be useful to know whether police officers, judicial personnel and social workers who were actively involved with populations at risk, such as the Roma, Ashkali and Gypsy communities, had received training in the prevention of trafficking, the identification of victims and the directing of victims towards the appropriate support services.

8. **Ms. Belmir** (Country Rapporteur) requested additional information on the training of judges and, in particular, on measures taken to raise their awareness of the guidelines contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and on measures taken to assess the effectiveness of the training provided. She would also welcome information on the training of police officers, prison staff, border guards and medical staff in the principles set forth in the Convention, particularly with regard to mechanisms for detecting signs of torture. She also requested specifics concerning the implementation of the project on holding facilities, which was referred to in the report.

9. Noting with satisfaction that the State party had taken measures to improve the prison system and to separate prisoners who were minors from adult prisoners, she requested information on the situation of minors from vulnerable groups and on the support and legal assistance afforded to them. She also requested information on the functioning of the justice system, in particular with regard to external oversight of the activities of the courts by NGOs and others, which raised questions concerning the independence of the judiciary. In addition, the delegation should describe the role played by witnesses who cooperated with the authorities. It would also be useful to know which authority was responsible for monitoring conditions of detention in prisons and whether, in order to lodge a complaint, prisoners had any other means at their disposal besides the mailboxes designated for the receipt of their complaints. The delegation should also state whether there were any plans to establish an independent body whose aim would be to monitor compliance with the Convention in places of detention. She found it surprising that statutory limitations were imposed on the right to receive compensation in the case of an unjustified conviction or imprisonment and she asked whether there were any plans to address the problem. The delegation should also tell the Committee how many persons had claimed compensation for wrongful detention since 2012. She wished to know how many persons had been charged with war crimes, the number of convictions handed down and the length of the sentences imposed on those found guilty. Lastly, she asked what efforts were being made by the State party to combat trafficking in street children and in undocumented persons.

10. **Mr. Gaye**, noting that the State party's Criminal Code prescribed a penalty of from 1 to 8 years' imprisonment for "particularly serious offences", asked what precisely was meant by that expression when it related to acts of torture. He also wished to know whether article 11 of the Code of Criminal Procedure, which prohibited the use of violence to obtain a confession or any other type of statement, expressly stipulated that confessions or statements so obtained could not be invoked as evidence in judicial proceedings. It was problematic that prosecutors were the ones who decided whether or not it was necessary to provide legal assistance, since their role was to conduct the case for the prosecution, which meant that they were not neutral parties in the trial. Would it not be preferable for that decision to be entrusted to another authority? Article 268 of the Code of Criminal Procedure stipulated that a person under arrest could request to be examined by a doctor only when he or she was brought before the prosecutor, who made a determination concerning the request. However, the right to be examined by a doctor from the outset of the deprivation of liberty was one of the fundamental legal safeguards that must be provided to all prisoners. It would be desirable for the State party to amend its legislation accordingly. He would be interested to know whether the State party had received extradition requests during the reporting period and, if so, what action had been taken with regard to such requests, in particular in the light of the State party's obligations under article 3 of the Convention. Lastly, the delegation should comment on the composition of the Ethics Committee that was in charge of investigating police conduct and its potentially negative impact on the impartiality of investigations carried out by that Committee.

11. **Mr. Domah** asked whether the Supreme Court had delivered any decisions that gave effect to the three fundamental rights of prisoners, namely the right to be assisted by a lawyer, the right to be examined by a physician from the start of the deprivation of liberty and the right to inform a family member of one's situation. If it had, he would welcome examples of such decisions. He also wished to know whether human rights training for judges included a module that focused specifically on torture and whether the Convention, which was directly applicable by the courts, had been invoked by judges in support of their decisions. It would also be interesting to know whether article 15 of the Convention, which prohibited the use of statements obtained through torture as evidence in judicial proceedings, had been directly applied by the courts and, if so, to have examples of decisions to that effect.

12. **Mr. Zhang** Kening said that it would be useful to have an English translation of the decision adopted by the Government in December 2013 providing for the establishment of a commission to supervise the authorities responsible for conducting investigations into threats and violence against journalists. Information on measures taken pursuant to that decision would also be welcome. He wished to know what the status was of the threat assessment analysis of employees in the print and electronic media, which was to have been undertaken by the Police Directorate (paragraph 183 of the report).

13. **Ms. Gaer** asked whether the identity of the official who ordered a detention was always recorded in a prisoner's personal file. With regard to the right to be examined by a physician, she wished to know whether the opinion of the doctor chosen by the prisoner had to be endorsed by the prison physician in order to be implemented and whether there had been instances in which prisoners had not received the treatment prescribed by their chosen doctor because the prison physician had been opposed to it. The fact that no cases of sexual violence between prisoners had been reported, event though the country's prisons were overcrowded, gave rise to the question whether the problem was receiving adequate attention from the authorities and whether effective complaint mechanisms guaranteeing prisoners the opportunity to report such violence had been set up. The delegation should indicate what measures were being taken in that regard and what the status was of efforts to develop a strategy to prevent sexual violence in detention centres, which was referred to in paragraph 73 of the State party's report. In view of the State party's denial of reports that lesbian, gay, bisexual and transgender (LGBT) persons were subjected to ill-treatment by the police, the delegation should comment on the case of Zdravko Cimbaljević, an LGBT rights defender who had been forced to flee the country owing to death threats and attacks against him and the authorities' refusal to protect him. The delegation should also comment on reports that the sale of underage girls with a view to their marriage abroad was still practised by the Roma and Egyptian minorities. Lastly, she requested an explanation as to why the prison sentences handed down in rape cases amounted, on average, to 2 years and 8 months, whereas the law provided for sentences of up to 10 years' imprisonment.

14. **The Chairperson** asked what the status was of the investigation into the assault on he journalist Olivera Lakić on 7 March 2012. The delegation should explain how only 6 requests for asylum out of the 1,300 that had been received as of 17 October 2012 had been granted and why, in 5 of those cases, the individuals concerned had been granted only subsidiary protection, even though it had been established that they risked being subjected to torture if they were returned to their country of origin.

15. **Mr. Tugushi** asked whether the State party had taken positive action to improve conditions of detention in the country's prison facilities, following the less than glowing assessment by the Ombudsman in a report published in March 2013. Specifically, he wished to know whether renovation works had been undertaken in Wing A of Podgorica Prison, where conditions were particularly poor. The delegation might inform the Committee whether there were still plans to build a hospital for prisoners requiring

treatment, which had been abandoned temporarily owing to a lack of funding. It would be interesting to know whether additional resources had been allocated to the Ombudsman's Office, given the new functions it was expected to carry out in its capacity as the national preventive mechanism. A number of NGOs had reported that the Parliament was considering proposals on amending the Law on Protection of Human Rights and Freedoms of Montenegro that might have the effect of weakening the Ombudsman's role. The delegation should comment on those reports and, if possible, provide the Committee with a copy of the proposals in English. It might also indicate whether any progress had been made in drawing up guidelines on the use of restraint on prisoners. On the subject of prison overcrowding, it would be interesting to know whether, apart from the construction of a new prison, the State party had taken any steps to promote the use of non-custodial measures. Lastly, it would be useful to have information on measures taken to prevent violence among prisoners and on the implementation of the project to increase the number of guards and medical staff in prison centres.

16. **Ms. Belmir**, citing several cases of journalists who had been assaulted since 2008, including Mladen Stojović and Sonja Radošević, noted with concern that judicial proceedings had not been initiated in any of those cases. She hoped that the State party would not wait for the Police Directorate to conduct an analysis of the situation, which was referred to in paragraph 183 of its report, before taking the necessary measures to counter such attacks and the associated impunity.

17. **Ms. Rabrenović** (Montenegro) said that the majority of inmates in detention centres had been imprisoned for minor offences and that, consequently, the problem of prison overcrowding should be resolved quickly once the system of alternatives to imprisonment, which was prescribed by law for offences punishable by less than 5 years' imprisonment, had been fully implemented. The delegation would provide further details on that issue at the next meeting.

The first part (public) of the meeting ended at 12 p.m.